rights, the environment, and criminal justice reform as well. Because of Elaine's efforts, kids who have had runins with the law have a better shot at staying out of adult courts and avoiding getting caught in an endless criminal cycle.

Elaine was always willing to listen to colleagues and friends on both sides of the aisle, even when partnership was challenging. She helped craft bold legislation to rescue Illinois from its dire economic circumstances. As house assistant majority leader, she was a leader in working to reform pensions in our State. Fiscal responsibility was always her core value.

The people of the 57th District were lucky to have such a strong advocate. Her energy, creativity, and thoughtfulness will be missed.

I thank her for her service to Illinois and her friendship. I wish her the best of luck in her next adventures and salute her husband, Barry, for his strong partnership with his talented spouse.

VOTE EXPLANATION

Mr. MENENDEZ. Mr. President, I was unavailable for rollcall vote No. 225, on Wyden amendment No. 1302. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 226, on Capito amendment No. 1393. Had I been present, I would have voted ''nay.''

Mr. President, I was unavailable for rollcall vote No. 227, on Cantwell amendment No. 1141. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 228, on Warner amendment No. 1138. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 229, on Flake amendment No. 1178. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 230, on Baldwin amendment No. 1139. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 231, on Heitkamp amendment No. 1228. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 232, on Brown amendment No. 1378. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 233, on Paul amendment No. 1296. Had I been present, I would have voted ''nay.''

Mr. President, I was unavailable for rollcall vote No. 234, on Cardin amendment No. 1375. Had I been present, I would have voted ''yea.''

Mr. President, I was unavailable for rollcall vote No. 235, on Kaine amendment No. 1249. Had I been present, I would have voted ''yea.''

GAO OPINION LETTER RELATED TO INTERAGENCY GUIDANCE ON LEVERAGED LENDING

Mr. TOOMEY. Mr. President, I ask unanimous consent to have printed in the RECORD the GAO opinion letter dated October 19, 2017, related to the Interagency Guidance on Leveraged Lending of March 22, 2013, Federal Register citation 78 FR 17766.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. GOVERNMENT
ACCOUNTABILITY OFFICE,
Washington, DC, October 19, 2017.

Subject: Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation—Applicability of the Congressional Review Act to Interagency Guidance on Leveraged Lending

Hon. PAT TOOMEY,
U.S. Senate.

DEAR SENATOR TOOMEY: You asked whether the final Interagency Guidance on Leveraged Lending (Interagency Guidance or Guidance), issued jointly on March 22, 2013, by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (the Board), and the Federal Deposit Insurance Corporation (FDIC), is a rule for purposes of the Congressional Review Act (CRA). CRA establishes a process for congressional review of agency rules and establishes special expedited procedures under which Congress may pass a joint resolution of disapproval that, if enacted into law, overturns the rule. Congressional review is assisted by CRA's requirement that all federal agencies, including independent regulatory agencies, submit each rule to both Houses of Congress and to the Government Accountability Office (GAO) before it can take effect. For the reasons discussed below, we conclude that the Interagency Guidance is a general statement of policy and is a rule under the CRA.

BACKGROUND

Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires all federal agencies, including independent regulatory agencies, to submit a report on each new rule to both Houses of Congress and to the Comptroller General before it can take effect. The report must contain a copy of the rule, ''a concise general statement relating to the rule,'' and the rule's proposed effective date. In addition, the agency must submit to the Comptroller General a complete copy of the cost-benefit analysis of the rule, if any, and information concerning the agency's actions relevant to specific procedural rulemaking requirements set forth in various statutes and executive orders governing the regulatory process.

CRA adopts the definition of rule under the Administrative Procedure Act (APA), which states in relevant part that a rule is ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.'' CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. The Agencies did not send a report on the Interagency Guidance to Congress or the Comptroller General because, as they stated in their letters to our Office, in their opinion the Guidance is not a rule under the CRA.

Interagency Guidance on Leveraged Lending

On March 22, 2013, OCC, the Board, and FDIC (referred to collectively as the Agencies) issued the Interagency Guidance, which forms the basis of the Agencies' review of the leveraged lending activities of supervised financial institutions. Leveraged lending generally encompasses large loans to corporate borrowers for the purposes of ''mergers and acquisitions, business recapitalization and financing, equity buyouts, and business . . . expansions.'' Leveraged loans raise risk concerns because of the size of the loans relative to the borrower's cash flow, and are generally used to finance one-time business transactions rather than a company's ordinary course of business activities. The Guidance outlines the Agencies' minimum expectations on a wide range of topics related to leveraged lending, including underwriting standards, valuation standards, the risk rating of leveraged loans, and problem credit management.

The Interagency Guidance is ''designed to assist financial institutions in providing leveraged lending to creditworthy borrowers in a safe-and-sound manner.'' It does so by describing expectations for the sound risk management of leveraged lending activities and lists a number of considerations for financial institutions: (1) the ratio of a borrower's debt to the company's earnings before interest, taxes, amortization and depreciation; (2) the ability of the borrower to amortize its secured debt, and (3) the level of due diligence performed in evaluating the loan. The Guidance explains the types of actions that concern the Agencies and that might motivate them to initiate a supervisory action that would require an independent finding that an unsafe or unsound action has occurred.

ANALYSIS

As an initial matter, one argument raised by the Agencies is that since the Guidance explicitly states that it is not a rule or a rulemaking action, it should not be considered a rule under CRA. However, although an agency's characterization should be considered in deciding whether its action is a rule under APA (and whether, for example, it is subject to notice and comment rulemaking requirements), ''an agency's own label . . . is not dispositive.'' Similarly, an agency's characterization is not determinative of whether it is a rule under CRA.

The focus of the arguments made by the Agencies is that the Interagency Guidance is a general statement of policy and is not subject to the CRA. They assert that the Guidance is a statement that explains how they will exercise their broad enforcement discretion. They maintain that it does not establish legally binding standards, is not certain or final, and does not substantially affect the rights or obligations of third parties. As a result, they claim, the Interagency Guidance is not a rule under CRA.

The Supreme Court has described ''general statements of policy'' as ''statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' In other words, a statement of policy announces the agency's tentative intentions for the future:

''A general statement of policy . . . does not establish a 'binding norm.' It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what the agency seeks to establish as policy.''

The Interagency Guidance provides information on the manner in which the Agencies